

## Department of Energy

## § 708.8

of this section, the Head of Field Element or designee shall notify:

(1) The contractor, person, or persons named in the complaint, and

(2) The Director, of the filing of the complaint.

A copy of the complaint shall be forwarded to the Director.

(f) Any person or party responsible for the conduct of any investigation or proceeding pursuant to this part shall ensure that appropriate safeguards are implemented to accommodate circumstances involving Restricted Data, national security information, or any other classified or sensitive information protected by Executive Order, statute, or regulation.

### **§ 708.7 Attempt at informal resolution.**

(a) The Head of Field Element or designee shall have 30 days from the date of receipt of a complaint in which to attempt an informal resolution of the complaint, prior to the initiation of a formal investigation. To this end, the Head of Field Element or designee may attempt to resolve the complaint through consultation and negotiation with the parties involved. If the Head of Field Element or designee has cause to believe the complaint might not meet the requirements of this part, within 5 days from the date of receipt of the complaint, the Head of Field Element or designee shall forward the complaint to the Director, without comment and without notice to any party, for a determination of whether attempts at informal resolution should be continued or the complaint should be dismissed summarily under any of the criteria set forth in § 708.8. If the Director determines to dismiss the complaint summarily, the complaint shall be dismissed and the parties notified pursuant to the procedures set forth in § 708.8. If the Director determines not to dismiss the complaint summarily, he shall, within 15 days from the date he received it, so advise the Head of Field Element or designee and return the complaint to the Head of Field Element or designee, who shall thereupon have 30 days to attempt informal resolution of the complaint.

(b) If informal resolution is reached, the Head of Field Element or designee shall enter into a settlement agree-

ment which terminates the complaint. The terms of such agreement shall be reduced to writing and made part of the complaint file, with a copy provided to all parties. Any such agreement shall be binding on the parties.

(c) If informal resolution cannot be reached, the Head of Field Element or designee shall immediately notify the Director and provide the file to the Director with a brief summary of the attempts at resolution.

### **§ 708.8 Acceptance of complaint and investigation.**

(a) Unless the Director determines that:

(1) The complaint has been settled under § 708.7,

(2) The complaint is untimely,

(3) The complaint or disclosure is frivolous or on its face without merit,

(4) The complainant has pursued a remedy available under State or other applicable law, or

(5) The complaint, for other good cause shown, should not be processed under this part, the Director, within 5 days of receipt of the file from the Head of Field Element or designee, shall notify the parties in writing that an investigation will be conducted under § 708.8 and of their right to a subsequent hearing under § 708.9.

Within 15 days of receipt of the file from the Head of Field Element or designee, the Director shall appoint an investigator and order an investigation of the complaint. If the Director declines to process a complaint for investigation, the Director shall notify the Secretary or designee within 15 days of receipt of the file from the Head of Field Element or designee. The notification shall be in writing and shall set forth the specific reasons for such refusal. A copy of such notice shall be sent to the Head of Field Element and shall be delivered by certified mail to the complainant and the contractor.

(b) If based upon information acquired during investigation of a complaint, the Director determines the existence of grounds for dismissal of the complaint, as set forth in § 708.8(a), the Director, within 15 days of receipt of the file from the investigator, shall dismiss the complaint and notify the Secretary or designee. The notification

shall be in writing and shall set forth the specific reasons for such dismissal. A copy of such notice shall be sent to the Head of Field Element, and shall be delivered by certified mail to the complainant and the contractor.

(c) If the Director dismisses a complaint pursuant to paragraph (a) or (b) of this section, the administrative process is terminated unless within 5 calendar days of receipt of the notice required under paragraph (a) or (b) of this section, the complainant files a written request with the Director for review by the Secretary or designee. Copies of any request for review shall be served by the complainant on all parties by certified mail, and the Director shall promptly send a copy to the Secretary. If the Secretary or designee determines that the complaint should be considered further, the Secretary or designee shall order the Director to reinstate the complaint and resume the administrative process. If, pursuant to either paragraph (a) or (b) of this section, a complaint has been dismissed because the complainant has pursued a remedy available under State or other applicable law, the complaint, upon written request by the complainant, will be subject to automatic reinstatement if the matter cannot be resolved under State or other applicable law due to a lack of jurisdiction.

(d) In conducting an investigation under this part, the investigator, for the purpose of determining whether a violation of § 708.5 has occurred, may enter and inspect places and records (and make copies thereof), may question persons alleged to have been involved in discriminatory acts and other employees of the charged contractor, and may require the production of any documentary or other evidence deemed necessary. The contractor shall cooperate fully with the investigator in making available employees and all pertinent evidence, including records.

(e) To the extent practicable, investigations under this part shall be conducted in a manner that protects the confidentiality of any person (other than the complainant) who requests leave to provide information on a confidential basis. Confidentiality shall not be extended to any persons who in

the course of their employment, or due to the nature of their position, are required to provide such information, and all grants of confidentiality shall be subject to waiver by the Hearing Officer if the Hearing Officer determines that waiver is necessary to achieve a fair adjudication of the case. The investigator shall advise all persons to whom confidentiality is granted that such grant of confidentiality is conditional, not absolute.

(f) The investigator, within 60 days of appointment, shall submit a Report of Investigation to the Director. The Report of Investigation shall become a part of the record and shall state specifically a finding, and the factual basis for such finding, with respect to each alleged discriminatory act. Within 10 days of receipt of the Report of Investigation, the Director shall serve it on the parties involved by certified mail.

#### **§ 708.9 Hearing.**

(a) Unless a complaint has been dismissed pursuant to § 708.8, within 15 days of receipt of the Report of Investigation, a party may, in writing, request a hearing on the complaint. Upon the request of one of the parties for a hearing, the Director shall transmit the complaint file to the Office of Hearings and Appeals.

(b) Upon receipt of the complaint file from the Director, the Director, Office of Hearings and Appeals shall appoint, as soon as practicable, a Hearing Officer to conduct a hearing and shall transmit to the Hearing Officer a copy of the file, including the Report of Investigation. The Hearing Office shall, within seven days following receipt of the complaint file, notify the parties of a day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE field organization, within 60 days from the date the complaint file is received by the Hearing Officer unless the Hearing Officer determines that another location would be more appropriate, or unless the complaint is earlier settled by the parties.

(c) In all proceedings under this part, the parties shall have the right to be represented by a person of their own choosing. Formal rules of evidence